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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,328	07/18/2003	Stefanie Lattner	98-15 D1	3272
30031	7590	06/15/2007		
MICHAEL W. HAAS RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			EXAMINER THOMAS, JONATHAN B	
			ART UNIT	PAPER NUMBER
			3709	
			MAIL DATE	DELIVERY MODE
			06/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

**Office Action Summary**

Application No.

10/623,328

Applicant(s)

LATTNER ET AL.

Examiner

Jonathan B. Thomas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/18/2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 43-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/18/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Information Disclosure Statement***

Applicant should note that the large number of references in the attached IDS have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. **See MPEP 609.05(b)**. Applicant is requested to point out any particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 43-47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meer 5,190,053 in view of Halstrom 5,365,945.

Meer teaches the electromuscular stimulating means 10, electrode positioning means 24, respiration detecting means and means for controlling a delivery of electrical

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energy (Col. 2 ll. 56-66), however Meer does not teach the following claimed limitations taught by Halstrom: Mandibular positing means 20 and members adapted to engage a structure associated with a patient's upper dentition and mandible and means for limiting the movement of one relative to the other 28, 32, and 40 respectively. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the Meer apparatus in view of Halstrom in order to maintain the patient's mandible in a protruded position, thereby averting obstruction of the pharyngeal pathway (Col. 4 ll. 20-24).

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meer in view of Halstrom as applied to claims 43-47, and 49 above, and further in view of Durkan 4,414,982.

Meer and Halstrom teach the apparatus described above, however they do not teach the following limitation taught by Durkan: Means for providing a positive pressure to an airway 22. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the Meer and Halstrom apparatus as described above with the airway of Durkan to supply oxygen to a patient substantially throughout the duration of an inspiration (Col. 1 ll. 36-39).

Method claims 50-54, and 56 are rejected because the apparatus of Meer in view of Halstrom as applied to claims 43-47, and 49 above performs the method steps as claimed.

Method claim 55 is rejected because the apparatus of Meer in view of Halstrom in view of Durkan as applied to claim 48 above performs the method steps as claimed.

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Claims 57- 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meer in view of *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Meer teaches the first and second electrodes 12, first and second support members 24, respiratory sensor (Col. 2 ll. 56-66), stimulation through at least a portion of inspiration (Col. 6 ll. 44-47), and support member coupling 18 and 20, but it does not teach the following claimed limitations: posterior to anterior or anterior to posterior electrode placement and stimulation nor stimulation start time prior to onset of inspiration. However it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) MPEP 2144.05 II A.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan B. Thomas whose telephone number is (571)270-3082. The examiner can normally be reached on Mon-Fri 7:30-5 EST. Alternate Fridays off..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 5712724868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



6/13/07



EHUD GARTENBERG  
SUPERVISORY PATENT EXAMINER

6/13/07